IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5865 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIMIT HASMUKHBHAI TILVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5865 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 22-01-2004, by

which the petitioner is detained as a "dangerous person" under PASA. Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases registered against the petitioner. All these cases are registered under Section 379 of I.P.C. It is alleged that the petitioner is committing theft of motor cycles, namely, Hero Honda. After considering aforesaid cases as well after considering statements of some witnesses, the detaining authority has passed the order of detention, which is impugned in this petition.

2) Ms.Patel, the learned advocate for the petitioner has submitted that the petitioner is already in judicial custody and the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by the learned advocate for the petitioner that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail and will continue his activity. Therefore, on this ground order of detention is required to be quashed and set aside.

3) To substantiate her say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for

bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

4) Learned advocate for the petitioner submitted that aforesaid cases are individual type of cases and the same will not attract public order as the same can be said to be cases of breach of law and order. To substantiate her say, she has relied upon the decision of this Court dated 3-3-1992 rendered in Special Criminal Application No.1681/1992. In the said decision, this Court has taken the view that cases registered under Section 379 may attract law and order but the same may not attract public order.

5) Considering the fact that the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail and considering the judgement referred above, this petition is required to be allowed.

6) Ms.Archana Raval, learned AGP has submitted that the petitioner is a habitual offender, if that be so, it is for the concerned Public Prosecutor to oppose the bail application of the petitioner by pointing out that the petitioner is in habit of committing this offence, however, this Court is not required its opinion on this point.

7) In view of what is stated above, this petition is allowed. The order of detention dated 22-01-2004 is quashed and set aside. The detenu, Nimit Hasmukhbhai Tilva is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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